

PT 08-1

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**NATIONAL WOMAN'S RELIEF CORPS,
AUXILIARY TO THE GRAND ARMY
OF THE REPUBLIC, INC.**

Applicant

**Docket # 06-PT-0028
Tax Year 2006**

RECOMMENDATION FOR DISPOSITION

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John A. Kauerauf of Sorling, Northrup, Hanna, Cullen & Cochran, Ltd. for the National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic, Inc.

Synopsis:

This case concerns whether property located in Sangamon County and owned by the National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic, Inc. ("applicant" or "NWRC") qualifies for a charitable purposes property tax exemption for the year 2006. A portion of the building on the property is used as a museum for Civil War era artifacts; the remainder of the building contains a residence for the caretaker and meeting space for the applicant's activities. Prior to the year in question, the applicant

did not pay property taxes for this property and each year completed a “Certificate of Status of Exempt Property” indicating that there was no change in ownership or use. (App. Ex. #9). In April 2006, the County Board of Review sent a letter to the applicant stating that after reviewing its files, it discovered that it did not have the applicant’s tax exempt application on file and asked the applicant to file an application. (App. Ex. #10) After the applicant filed the application for the exemption, the Board of Review recommended that the exemption be granted. The Department of Revenue (“Department”) reviewed the Board’s decision and determined that the exemption should be denied on the basis that the property is neither owned by a charitable organization nor used for charitable purposes. The applicant timely protested the Department’s determination, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The NWRC was formed in 1883 by groups of women who wanted to assist an organization known as the Grand Army of the Republic (“GAR”), which was composed of the male veterans of the Union Army who had served in the American Civil War. The GAR was formed to assist the soldiers returning home from the War in their quest to resume a normal life. (App. Ex. #3, p. 83; Tr. pp. 11-15)
2. In October 1932, the NWRC was organized as an Illinois not-for-profit corporation. (App. Ex. #1)

3. In September 1941, the applicant acquired property located at 629 S. Seventh Street in Springfield. The property currently contains a building that has a total of approximately 2,800 square feet. (Dept. Ex. #1; App. Ex. #4; Tr. p. 33)
4. Approximately 1,752 square feet of the building is used for a museum known as the Grand Army of the Republic Memorial Museum. (Dept. Ex. #1; App. Ex. #6)
5. The remainder of the building, approximately 1,040 square feet, contains an apartment where the caretaker for the building lives. It also has office space used by the applicant's officers and Board of Directors. In addition, there is a basement with more meeting space and where exhibits are stored. (Dept. Ex. #1; Tr. pp. 39-40, 149)
6. In September 1962, President Kennedy signed an Act that established the NWRC as a federally chartered corporation. The Act indicates that, except as otherwise provided, the corporation has perpetual existence. (App. Ex. #2; 36 U.S.C. §153701)
7. The permanent national headquarters of the NWRC are at 629 S. Seventh Street in Springfield. (App. Ex. #3; 36 U.S.C. §153708)
8. According to the Congressional Charter, the NWRC's purposes are as follows:

To perpetuate the memory of the Grand Army of the Republic, as the National Woman's Relief Corps is its auxiliary and was organized at its request in 1883, and of the men who saved the Union in 1861 to 1865;

To assist in every practicable way in preserving, and making available for research, documents and records pertaining to the Grand Army of the Republic and its members;

To cooperate in doing honor to all those who have served our country patriotically in any war;

To teach patriotism, the duties of citizenship, the true history of our country, and the love and honor of our flag;

To oppose every tendency or movement that would weaken loyalty to, destroy, or impair our constitutional Union; and

To inculcate and broadly sustain the American principles of representative government, equal rights, and impartial justice for all. (App. Ex. #2; 36 U.S.C. §153702)

9. The applicant's Constitution states its Objects as follows:

Section 1. To especially perpetuate the memory of the Grand Army of the Republic and its heroic dead.

Section 2. To assist such Veterans of all wars of the United States of America as need our help and protection, to extend needful aid to their widows and orphans, and to assure them of sympathy and friends. To cherish and emulate the deeds of all loyal women who rendered loving service to our country in her hour of peril.

Section 3. To maintain true allegiance to the United States of America; to inculcate lessons of patriotism and love of country among our children and in the communities in which we live; and encourage the spread of universal liberty and equal rights to all. (App. Ex. #3, p. 2)

10. The applicant's Constitution states the following regarding eligibility to membership:

Women of good moral character and correct deportment, who have not given aid and comfort to the enemies of the United States of America, and are citizens of the United States of America, who would perpetuate the principles to which this association stands pledged, and who have attained the age of thirteen years, shall be eligible to membership in the Woman's Relief Corps. (App. Ex. #3, p. 2)

11. The NWRC is a national organization that consists of state organizations, which are known as Departments, and subordinate Corps. (App. Ex. #3, p. 2)

12. A subordinate Corps that does not have a Department reports directly to the national organization and is known as a National Corps. (Tr. pp. 21, 107-108)

13. According to the Constitution, an application for membership in a subordinate Corps must include an admission fee of not less than \$2 and be recommended and signed by two members of the Corps. The application is referred to a committee of three, whose duty is to investigate and report. After investigation, the committee either approves or disapproves the application and reports at a subsequent regular meeting. (App. Ex. #3, pp. 5-6)
14. The admission fee is intended to cover the cost of a badge, a copy of the Rules and Regulations, and a desk flag. The fee varies among the Corps, the highest one currently being \$10. (App. Ex. #3, pp. 5-6; Tr. pp. 28-29)
15. After an application is read at the meeting and the committee reports, the members vote on the application. The ballots include either white or black cubes. If 20 or less ballots are cast and two or more of them are black cubes, the candidate is rejected. If more than 20 are cast, then an additional black cube for every additional ten ballots, or fraction thereof, results in rejection. The President may order a second ballot, the result of which is final. (App. Ex. #3, p. 6)
16. If an applicant is rejected, the admission fee is returned. She is not eligible for admission to the Corps that rejected her until 6 months have passed, but she may apply for membership in any other Corps and become a member if accepted. (App. Ex. #3, p. 7)
17. If, after being elected, a member proves to be unworthy, the Corps may by two-thirds vote petition the Department President to set aside the ballot and annul the election. (App. Ex. #3, p. 7)

18. The Constitution requires each Corps to assess quarterly dues upon its members.

The dues include the per capita tax due the Department. (App. Ex. #3, p. 10)

19. The highest Corps dues, on an annual basis, are currently \$10. (Tr. p. 29)

20. Members-at-large are members who live in an area where there is no local Corps but who still want to participate. The at-large member must pay an admission fee of \$5 plus annual dues of \$10. The application is investigated by the National President's committee and approved by the National President. (App. Ex. #3, p. 8; Tr. p. 58)

21. An individual member is responsible for paying her Corps dues or at-large membership dues; the other per capita taxes are paid by the Corps and Departments to the National organization. (Tr. pp. 160-161)

22. According to the Constitution, any member who is 6 months in arrears for dues is notified of the arrearage, prohibited from voting, and ineligible for any office. If a member is 8 months in arrears for dues, she is notified in writing of the arrearage, and on failure for 2 months thereafter to pay the dues, may by vote of the Corps be dropped from the roll. She may be reinstated through the regular application process. (App. Ex. #3, p. 10)

23. If an indigent person is unable to pay the \$10 fee or dues, the other members of the Corps will pay the fee. (Tr. pp. 29-30)

24. Members who are dropped from membership are those who are no longer interested and do not want to be members. Members who would like to remain members but cannot afford to pay dues, however, have their dues paid by the organization. (Tr. pp. 33, 155)

25. A member may be dishonorably discharged or suspended for a specified period of time for the following:

- Disloyalty to the United States or violation of the pledge to perpetuate the objects of the Order.
- Violations of Rules and Regulations or disobedience of lawful order.
- Violation of the laws of the land.
- Conduct prejudicial to the good of the Order. (App. Ex. #3, p. 57)

26. During 2006, no potential member was “blackballed” and no one was disciplined.
(Tr. pp. 159-160)

27. The regular meetings of each Corps are required to be held at least monthly.
(App. Ex. #3, p. 11)

28. Each Department is required to assess a per capita tax on each Corps in its jurisdiction of not less than \$2 annually on each member therein. (App. Ex. #3, p. 22)

29. The Department Convention consists, *inter alia*, of the Department officers, the subordinate Corps Presidents, the National President, and some of the past National and Department officers. (App. Ex. #3, p. 21)

30. The Constitution requires an annual meeting of each Department Convention. A semiannual meeting may be held if determined at the annual meeting. (App. Ex. #3, p. 22)

31. The supreme power of the NWRC is in the National Convention. (App. Ex. #3, p. 36; 36 U.S.C. §153704)

32. The National Convention consists, *inter alia*, of the National, Department and subordinate Corps officers, and some of the past National, Department and subordinate Corps officers. (App. Ex. #3, p. 36)
33. The National Convention assesses a per capita tax on each Department of \$4 per annum and on each subordinate Corps of \$4 per annum on each member therein. (App. Ex. #3, p. 37)
34. The applicant's National officers who are elected include the following: President, Senior and Junior Vice Presidents, Treasurer, Deputy Treasurer and Chaplain. An Executive Board, which consists of 5 members, is also elected, as well as Committee Members. There are additional National officers who are appointed by the President. All of these officers and Past National Presidents in good standing constitute the National Council. (App. Ex. #3, pp. 38-39)
35. There is an annual meeting of the National Convention. Special meetings of the National Convention may be called by the President with the consent of the National Council. (App. Ex. #3, p. 38)
36. The Standing Rules of National Convention state that the convention is four days. (App. Ex. #3, p. 80, #52)
37. During the intervals between the conventions, the National Council continues the work of the convention, if necessary. It is responsible for the general policies, program, and activities of the corporation. Generally all of the work is done at the National Convention. In recent years, the National Council was consulted once between conventions because the organization needed to replace an officer who had passed away. (Tr. p. 23; 36 U.S.C. §153704(4))

38. Four times a year the applicant publishes General Orders, which tell “what’s going on and who needs what and what this particular officer is raising money to do.” In every March General Orders, the Chaplain has a lengthy message for Memorial Day. (Tr. pp. 23-24)
39. The “fifth General Orders” are sent out at the same time as the fourth General Orders and include items that must be raised at the National Convention. (Tr. p. 24)
40. The General Orders are not sent to every member of the organization. Two copies are sent to each Corps and various past officers. General members who would like to have a copy may subscribe to them for \$1 a copy. (Tr. pp. 61-62)
41. The applicant also has a Board of Directors, which consists of five members; three of the members are Past National Presidents. The Board of Directors is in charge of and regulates the Headquarters and Museum, including its upkeep, furnishings, and displays. (App. Ex. #3, pp. 53-54)
42. The members of the Board of Directors meet at least once a year at the Headquarters in Springfield. (App. Ex. #3, p. 54A; Tr. p. 108)
43. The Executive Board, which consists of five members, is responsible for raising funds for the general fund. Members of the Executive Board conduct fundraisers such as cookouts, yard sales, bake sales, and raffles for crafts or items that are donated. The Executive Board does not spend any money; it only raises money. (Tr. pp. 24-25, 62-63, 136-137)
44. The museum is open to the general public Tuesday through Saturday, 10:00 a.m. to 4:00 p.m. It is closed January and February and major holidays. There is no

- admission fee to visit the museum. A donation bowl is in the museum. (App. Ex. #6, 8; Tr. pp. 43, 76, 142, 159)
45. The museum contains a collection of Civil War era artifacts including the flag taken from Ford's Theater in Washington D.C. on the night of President Lincoln's assassination. It also displays rifles, muskets, carbines, sabers, swords and other weapons, both Union and Confederate. In addition, it includes diaries, historical photographs, sketches made during the Civil War, and other items of the era. (App. Ex. #6; Tr. pp. 44-46)
46. The museum houses a complete set of documentation of the Union and Confederate officers and personnel who fought in the Civil War as well as the historical records of the GAR and NWRC, all of which are made available for genealogical and other Civil War era research efforts. (Tr. pp. 38, 45-48)
47. The caretaker is not assessed rent and is not paid a salary. The caretaker is not required to be a tour guide, but he offers information on his own. (Tr. pp. 39, 76, 158-159)
48. The caretaker is provided furnished rooms, utilities and local telephone service. All materials and supplies for snow removal, grounds upkeep, painting and cleaning are provided by the applicant. In exchange, the caretaker is required to open the museum to the public five days a week, six hours a day, and to keep the interior clean. (App. Ex. #12, p. 10)
49. The local Corps, which is known as the B.F. Stephenson Corps #17 of Springfield, holds its meetings at the building. (App. Ex. #3, p. 77; Tr. pp. 146-147)

50. The museum is advertised on websites concerning Springfield visitor information and historic sites such as www.visitspringfieldillinois.com, and www.cityguidespringfield.com. (App. Ex. #6, 7, 8; Tr. pp. 137-142)
51. During 2006, prospective members usually heard about the organization through word of mouth. The subordinate Corps are responsible for advertising in the communities in which they are located. (Tr. pp. 27, 137)
52. The audited financial statements for the fiscal year ending August 31, 2006 include the following under Statement of Activities:

<u>Revenue and Other Support</u>	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Total</u>
Donations	\$ 442	\$ 13,976	\$ 14,418
At large dues & per capita tax	2,356	-	2,356
Convention revenue	1,751	-	1,751
Supplies, postage & handling	691	-	691
Journal, general orders & postage	326	-	326
Executive board ticket sales	3,061	-	3,061
Receipts from disbanded chapters	944	-	944
Interest	1,562	-	1,562
Dividends & cap. gain distrib.	3,089	-	3,089
Gain on investments, at fair value	178	-	178
Net assets released from restrictions	<u>14,206</u>	<u>(14,206)</u>	<u>-</u>
Total revenue and other support	28,606	(230)	28,376

Expenses

President's allowance & expense	2,300	-	2,300
Treasurer's allowance & expense	1,750	-	1,750
Secretary's allowance	1,750	-	1,750
VAAVS travel allowance	300	-	300
Insurance	1,150	-	1,150
Professional fees	2,300	-	2,300
Convention	2,191	-	2,191
Office supplies	1,035	-	1,035
Wreathes and awards	2,400	-	2,400
Museum	8,397	-	8,397
Flags & plaques	503	-	503
Donations	1,430	-	1,430

Scholarships	<u>1,950</u>	<u>-</u>	<u>1,950</u>
Total Expenses	<u>27,456</u>	<u>-</u>	<u>27,456</u>
CHANGE IN NET ASSETS	1,150	(230)	920

(App. Ex. #12, p. 4)

53. The audited financial statements for the fiscal year ending August 31, 2005 include the following under Statement of Activities:

<u>Revenue and Other Support</u>	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Total</u>
Donations	\$ 530	\$ 32,872	\$ 33,402
At large dues & per capita tax	2,606	-	2,606
Convention revenue	2,518	-	2,518
Supplies, postage & handling	701	-	701
Journal, general orders & postage	336	-	336
Executive board ticket sales	1,737	-	1,737
Receipts from disbanded chapters	1,991	-	1,991
Interest	381	-	381
Dividends & cap. gain distrib.	1,119	-	1,119
Gain on investments, at fair value	1,272	-	1,272
Net assets released from restrictions	<u>11,795</u>	<u>(11,795)</u>	<u>-</u>
Total revenue and other support	24,986	21,077	46,063
<u>Expenses</u>			
President's allowance & expense	2,300	-	2,300
Treasurer's allowance & expense	1,748	-	1,748
Secretary's allowance	1,898	-	1,898
VAAVS travel allowance	300	-	300
Insurance	1,150	-	1,150
Professional fees	2,300	-	2,300
Convention	3,223	-	2,223
Office supplies	1,713	-	1,713
Wreathes and awards	2,219	-	2,219
Museum	5,229	-	5,229
Flags & plaques	407	-	407
Donations	2,018	-	2,018
Scholarships	<u>2,300</u>	<u>-</u>	<u>2,300</u>
Total Expenses	<u>26,805</u>	<u>-</u>	<u>26,805</u>
CHANGE IN NET ASSETS	(1,819)	21,077	19,258

(App. Ex. #12, p. 5)

54. Temporarily restricted net assets are monies given to the applicant for a specific purpose. Temporarily restricted net assets were available for the following purposes as of August 31, 2006:

Headquarters/Museum – for the operating expenses of the property in Springfield and purchase of collection items. \$1,141

Scholarships – to assist the children of members or members of the applicant in pursuit of a college education. \$2,965

Patriotic Instructor/Plaques – award prizes for patriotic essays and provide permanent plaques of the Gettysburg Address in educational institutions. \$83

Veterans – provide grants to Veteran’s Hospitals. \$286

Southern Memorial – commemorating Memorial Day with tributes to Union Veterans of the Civil War buried in the Southern States as requested by the Grand Army of the Republic. \$2,847

Senior Vice President’s – maintaining the alarm system at the Headquarters/Museum, purchasing of flags presented in memory of the Grand Army of the Republic, and giving the annual “Love Gift” to a children’s hospital or special schools. \$1,407

Junior Vice President’s Club – special needs at the Headquarters/Museum. \$665

Past and Present Department Presidents Association – provide scholarships to nursing students. \$355

Museum/Investments – for investment with the income used in the general fund. Expenditures are temporarily restricted and may only be changed by resolution passed at the National Convention. \$73,935.

Total temporarily restricted net assets: \$83,684

Net assets were released from donor restriction for the year by incurring expenses that satisfied the restricted purpose. (App. Ex. #12, pp. 9-10)

55. The convention revenue includes money received from members for the registration fee and for two breakfasts (Senior Vice President and Senior Aide breakfasts) and two dinners (GAR Memorial Banquet and Pioneer Dinner) during the convention. The registration fee for the convention is \$10 per delegate and \$3 for guests. (Tr. pp. 59, 157-158)
56. The convention expense includes the cost of the four convention meals for the President, Secretary, and Treasurer, and the hotel rooms for the Secretary and Treasurer. The hotel usually gives the room for the President free of charge. If not, the organization pays for it. (Tr. pp. 60, 70, 158)
57. At the GAR Memorial Banquet, the applicant gives awards to veterans hospitals. The scholarships are awarded at that time, and the applicant gives a Gettysburg Address plaque to an educational institution within the city where the convention is located. The Pioneer Dinner is “sort of a fun night.” (Tr. pp. 55, 59, 157-158)
58. The money from the Senior Vice President’s fund is used to purchase an American flag to present in memory of the GAR to the hotel where the National Convention is located. The conventions are held in different cities throughout the country each year. (Tr. pp. 57, 144)
59. The applicant’s Constitution states that all supplies that are necessary for Corps and Department use must be secured from the National Treasurer. (App. Ex. #3, p. 16)
60. The applicant’s supplies, postage and handling revenue includes money received for badges and copies of the Rules and Regulations, which are provided at cost.

- A handling charge, which does not exceed \$1.50, covers the cost of the box. The amount of postage is added to that. (Tr. pp. 61, 122-123)
61. The office supplies expense includes the amount that is paid for the badges. The expense for the fiscal year ending August 31, 2006 included a solid gold badge for one of the past National Presidents that cost over \$500. (Tr. pp. 70-71, 158)
62. The Standing Rules of the National Convention state that all supplies sold to Departments and National Corps shall be on a 20% basis of profit on costs, and the Departments will act accordingly, adding the percentage that they vote to add in selling to Corps. The practice of adding a 20% markup is not currently followed. (App. Ex. #3, p. 73; Tr. p. 111)
63. The revenue for Executive Board ticket sales includes income from raffle tickets for items that have been donated to the organization. During 2006, the applicant did not have fundraising expenses; its fundraising was through the events such as raffles, garage sales, etc. (App. Ex. #12, p. 11; Tr. pp. 62-63, 124, 135-136)
64. The allowances and expenses for President, Treasurer, and Secretary are intended to cover their office and travel expenses. The money spent by these officers is generally greater than the allowance. Additional expenses are paid with their personal income. (Tr. pp. 66-67, 134-135)
65. The VAAVS travel allowance is for a representative of the applicant to travel to the annual meeting for the National Veterans Administration Volunteer Service. The representative is appointed for two years by the applicant's President. (App. Ex. #3, p. 68; Tr. pp. 67-68)

66. The applicant's members go to veterans' hospitals to do things such as read for those who cannot read, feed those who cannot feed themselves, and write letters for those who cannot write. They also promote parties for the patients and give them personal items, such as toothpaste and toothbrushes. (Tr. pp. 67, 87-90)
67. The insurance expense is for fire and casualty insurance for the property in Springfield. The professional fees are for the accountant and auditor. As part of its Congressional Charter, the applicant is required to file an annual report with Congress. (36 U.S.C. §153712; Tr. pp. 68-69)
68. The museum expense includes the utilities for the museum and the monitoring system. (Tr. pp. 75, 128)
69. The applicant's endowment fund known as the Grand Army Museum Investment Fund is open to receive funds but is temporarily closed to disbursements. It may only be used to benefit the museum and headquarters in Springfield. Members and friends may become investment members for a minimum donation of \$100. The donor receives a recognition plate that is placed on a plaque at the museum. (App. Ex. #3, p. 78; App. Ex. #12, p. 10; Tr. p. 112)
70. The month of October is set aside by all Corps to conduct special events and promote special donations for the museum. During October, members are encouraged to conduct events, such as yard sales, to raise money for the museum. (App. Ex. #3, p. 78, #43c; Tr. pp. 112-113)
71. The expense for wreaths and awards includes wreaths that are sent for Memorial Day to cemeteries in the south and in Washington D.C. It also includes a plaque that is given to a West Point cadet and an award given to a midshipman at

- Annapolis. In addition, this expense includes an award for the Patriotic Instructors Essay, which is awarded to a middle school child. (Tr. pp. 71-75)
72. Money from the Southern Memorial fund is used to pay for the wreaths. The Daughters of Union Veterans (“DUV”) contribute half of the cost of the wreaths. (Tr. pp. 55-57, 156)
73. The expense for flags and plaques is for the flag that is presented in memory of the GAR to the hotel that hosts the convention. It also includes the Gettysburg Address plaque. (Tr. p. 77)
74. The expense for donations includes donations to the Veterans Administration Volunteer Service. (Tr. pp. 77-78)
75. The scholarship expense is for scholarships in the amount of \$350 that during 2006 were granted to members or descendants of members. The applicant awards as many scholarships as its funds will allow, and they are paid after the student completes his or her first semester. (App. Ex. #3, pp. 51-52; Tr. pp. 79-82, 116-117, 133)
76. The applicant does not have any capital stock or shareholders. (App. Ex. #2; 36 U.S.C. §153707)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.

* * *

(f) Historical societies. (35 ILCS 200/15-65(a), (f)).

Property may therefore be exempt under this section if it is (1) owned by an entity that is an institution of public charity or historical society, and (2) actually and exclusively used for charitable purposes. *Id.*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home at 156-57. If the primary use of the property is charitable, then the property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill. App. 3d 658, 661 (1st Dist. 1982).

In Methodist Old Peoples Home, *supra*, the Supreme Court provided the following guidelines for determining charitable ownership and use: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from

public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 39 Ill. 2d at 156-57. These factors are used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004). They are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2nd Dist. 1995).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992).

The NWRC argues that it qualifies for the exemption under either one of the following subsections of section 15-65: (a) because it is an institution of public charity or (f) because it is a historical society. The applicant notes that neither the Property Tax

Code nor case law defines “historical society.” The applicant suggests applying the traditional definition of “historical,” which means pertaining to or connected with history or the preservation of the past, and “society,” which is a group of people united for the promotion of the same object (Webster’s Encyclopedia Dictionary of the English Language (1971)), to determine whether the applicant is a historical society.

The NWRC believes that it is a historical society because it is a group of people devoted to preserving the history of the Civil War Veteran. The NWRC’s first stated purpose is to perpetuate the memory of the GAR, which is the veterans’ organization formed to honor the Union soldiers of the Civil War. The second stated purpose is to make available for research the documents and records that pertain to the GAR. The NWRC accomplishes these goals through the museum where documents and artifacts are made available to the general public. Also, by taking part in ceremonies honoring the war dead and encouraging patriotism, the applicant provides a reminder to all who come in contact with it of the sacrifices made by the soldiers in the Civil War. The applicant contends this case is analogous to Department of Revenue v. Everett McKinley Dirksen Endowment Fund, No. PT 06-7¹, where the Department granted an exemption for property used to house, display and preserve records and memorabilia of Senator Dirksen.

The NWRC also argues that it is an institution of public charity because it meets the factors under Methodist Old Peoples Home, *supra*. The NWRC has no capital, capital stock, or shareholders and derives almost all of its income from donations and earnings from funds that are held in trust for the purposes for which the money was

¹ This citation refers to the decision number under the property tax cases on the Department’s website, www.tax.illinois.gov/LegalInformation/Hearings/index.htm.

given. The NWRC asserts that it benefits an indefinite number of people through the museum, which is free and offers anyone the opportunity to view and study the artifacts and records. The NWRC maintains that its members donate countless hours of service to veterans' hospitals, which benefits everyone in those facilities and assists the government in the operation of those institutions.

In the NWRC's view, the Department's concerns about its membership rules and its one-time limitations on some scholarships are not substantial. The applicant believes that its membership standards are irrelevant because a charity is defined by the work it does and not who performs the work. The applicant states that nothing in Methodist Old Peoples Home, *supra*, requires an examination of an organization's membership selection standards, and the focus of the factors is not on who performs the charitable work but rather who benefits from the charitable work. In addition, the testimony indicates that the NWRC goes to great pains to ensure that all who desire membership receive it and are retained in membership once a part of the organization. Moreover, the NWRC argues that its scholarships are a minor part of its work and in 2007 are available to everyone. The NWRC states that it was only a brief period that its scholarships were restricted to those who were sponsored by the society's membership. According to the applicant, given the ease by which membership can be obtained, the applicant has not placed a substantial obstacle in the way of this one particular benefit.

The NWRC maintains that the Department's reliance on the case of Department of Revenue v. XYZ Club, No. ST 07-3², is misplaced. In that case, the taxpayer's request for an exemption from sales taxes on the basis that it was a charitable organization was

² This citation refers to the decision number under the sales tax cases on the Department's website. The taxpayer's name is redacted on the website due to confidentiality requirements.

denied. The applicant notes that the taxpayer in that case was a business group that met primarily for building business relationships among its members, and the charitable functions of that organization were secondary to the personal advantage gained by each member. The NWRC claims that it is a different organization because no one associates with it for personal gain; to the contrary, the officers of the NWRC give more in time and money than they receive. Furthermore, the NWRC argues that the restrictions on membership in that case impacted who would benefit from the organization. On the other hand, the beneficiaries of the NWRC's charitable work are the patrons of the museum, those hearing the story of the GAR through patriotic ceremonies, and the veterans who benefit from the applicant's care. In other words, the NWRC believes that its old, unused membership rules are not relevant in this case because those who benefit from the applicant are not its members.

In addition to being a charitable organization, the NWRC asserts that the property is used for charitable purposes. The museum is free and open during normal business hours. The museum derives no profit and obtains its funds primarily through donations and earnings on previously donated funds. No one benefits privately, and there are no obstacles placed in the way of anyone wanting access to the museum. The applicant claims that the fact that the caretaker's apartment is not accessible to the public does not disqualify the premises for the exemption because the focus must be on the primary use of the property. The applicant states that without rent, the caretaker's apartment is no more than a method of providing additional security, which is a reasonable subsidiary use of the property.

In response, the Department contends that the NWRC is not a charitable organization because it does not provide a gift; the only charity given is from individual members who perform charity on their own with no organized charity from the applicant. The Department argues that there is no evidence that members are required to offer assistance to veterans in hospitals or do any other charity. The Department states that the applicant has only shown that almost all of its money and charity come from individual acts of charity, and most of its money is spent on itself. The Department claims that the flags and plaques that the NWRC gives are simply tokens of appreciation. Also, one-half of the flowers for graves are provided by Daughters of Union Veterans (“DUV”), and it is unclear where the other half comes from. The Department maintains that the NWRC simply orders the flowers and has them shipped to the cemeteries. The Department contends that most of the remaining separate funds appear to be mainly from members and much of it goes to the officers’ travel expenses and convention.

The Department believes that the applicant provides only one small act of charity: membership dues can be waived if a member cannot pay. According to the Department, the NWRC’s charity and good character stop there. Potential members are put through an arduous acceptance procedure and may be denied membership at various times. Two current members must sponsor potential members, and an investigation committee may recommend denial. If the committee recommends acceptance, the officers may dismiss that committee and get a new one. Before voting, any member may request the candidate be denied. The Department notes that although the blackball process has not been recently invoked, it is in the rules and may be used if needed. In addition, members may be dishonorably discharged.

The Department argues that the membership rules are not irrelevant as the applicant suggests, and the applicant's contention contradicts the Supreme Court in Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956). The court stated that the corporation's "character and the purpose for which it was organized must be ascertained by reference to its charter." *Id.* at 291. The court added that laudable, patriotic, and public spirited objectives do not constitute charitable purposes for property tax exemptions. *Id.* The Department contends that the preamble and charter in Rogers Park are extremely similar to that of the subject property; the applicant's chartered purposes are laudable and patriotic but not charitable.

The Department claims that the only part of the test in Methodist Old Peoples Home, *supra*, that the applicant meets is that it has no capital, capital stock, or shareholders, and it earns no profits or dividends. The Department believes that the applicant places obstacles in the way of those who would avail themselves of the charity because during the year in question, only members and their children were eligible for scholarships. The practice went back to at least 2004, and the applicant did not indicate how many years prior to that where people in need applied and were denied because only members received the charity.

The Department claims that although the applicant gets money from its members and the DUV, it is unknown how much funding comes from others. The Department states that the financial report does not indicate a breakdown of donations, and it appears that almost all funding comes from events such as garage sales and bake sales and not organized events of the NWRC. The Department contends that the applicant spends most of its money on itself for the national convention and to perpetuate itself, and the amount

spent far surpasses any charity. The Department asserts that although the museum is advertised on three websites, none of the websites are the applicant's own website. Also, the NWRC's witness referred to brochures but did not present any in evidence, and the NWRC itself does not advertise. The Department maintains that money that could have gone to charity went to an expensive gold badge as a gift for a past president. The Department argues that the amount the applicant pays to its officers exceeds the small scholarships given to two cadets each year. The Department notes that in North Shore Post No. 21 v. Korzen, 38 Ill. 2d 231 (1967), the Supreme Court stated that activities such as presenting Americanism awards to schools, participating in Veterans Day parades, participating in funerals of veterans, and sponsoring baseball and rifle teams do not constitute charitable purposes. See *Id.* at 236.

In addition, the Department argues the building is not used for charitable purposes. The Department states that the museum portion of the building is open to the public, and donations are accepted. The Department notes that a donation bowl is there, and it is advertised that donations are welcome. The Department also states that the caretaker is not a tour guide; he is there for security purposes and to take care of the premises. Furthermore, the public is not allowed into the caretaker's apartment, and only NWRC officers use the office space and basement. The local Corps holds its meetings in the building.

The Department believes this case is distinguishable from Everett McKinley Dirksen, *supra*, because the applicant's purpose in the present case is patriotic, not charitable, and the percentage of overhead it spends on itself exceeds any charity. Also, the applicant does not have any organized charity; charity only came from individual

members. The Department alleges that this case is similar to XYZ Club, *supra*, which concerned a business organization that selected its members. The Department contends that NWRC's requirements are more stringent than those in XYZ Club, and like XYZ Club, the NWRC is organized to foster social interaction and fellowship through good works.

With respect to NWRC's claim that it is a historical society, the Department states that NWRC did not present evidence or testimony specific to this claim and raised the issue for the first time in its brief. The Department also contends that under the applicant's definition of itself as a group of people united to promote the preservation of some aspect of history, the applicant is laudable and patriotic, as in Rogers Park, *supra*, but is not charitable.

Although the NWRC raised the specific argument that it is a historical society for the first time in its brief, the pre-trial order entered in this matter states that the issues "are whether the property qualifies for a charitable purposes exemption under section 15-65 of the Code, or in the alternative, whether it qualifies for an exemption as property of a veterans' organization under section 15-145 of the Code."³ (Pre-trial Order 3/15/07) Because subsection (f) concerning historical societies is under section 15-65, which is the section indicated in the pre-trial order, this issue will be addressed.

As the applicant points out, neither the Code nor Illinois case law provides a definition of "historical society" for purposes of determining whether an organization qualifies under subsection (f) of section 15-65. In order to determine the meaning of the phrase, the cardinal rule of statutory construction is to ascertain and give effect to the intention of the legislature. Solich v. George & Anna Portes Cancer Prevention Center of

³ The applicant did not make any argument regarding its right to an exemption under section 15-145.

Chicago, Inc., 158 Ill. 2d 76, 81 (1994). The best evidence of the legislature's intent is the language used in the statute itself, which must be given its plain and ordinary meaning. Lulay v. Lulay, 193 Ill. 2d 455, 466 (2000). When the statutory language is clear, it will be given effect without resort to other aids for construction. *Id.* When the statutory language is ambiguous, it is appropriate to resort to extrinsic aids, such as legislative history. Kunkel v. Walton, 179 Ill. 2d 519, 534 (1997).

Because a definition of "historical societies" is not included in the statute, I believe it is appropriate to look at the legislative history, which provides a small amount of guidance.⁴ Public Act 89-426 added subsection (f) to the Code through House Bill 2141 (which incorporated House Bill 121), and the original intent of that bill was to "help out" a specific historical society that was relocating a log cabin.⁵ See Transcription Debate, 89th General Assembly, House of Representatives, 4/25/95, pp. 4, 9. Representative Moffitt stated that the law would allow the property "to become tax exempt if it is used for educational, not-for-profit purposes." *Id.* at 9. He later stated, "I believe it would apply to any other group that meets the same criteria, educational, not-for-profit." *Id.* at 10.⁶ Based on the foregoing, I believe the legislature did not intend to

⁴ Public Act 91-416 amended subsection (f), which resulted in the current version. The initial inclusion of subsection (f) under section 15-65 was done through Public Act 89-426, which added the following under subsection (f): "An historical society, but only if all taxing districts within which the property is situated have adopted a resolution finding that the society is a charitable organization using the property exclusively for charitable purposes."

⁵ Debates in the House of Representatives of the 89th General Assembly concerning this bill were on the following dates: 4/24/95 (pp. 84-89), 4/25/95 (pp. 3-13), and 10/20/95 (pp. 45-49). Senate debates were on the following dates: 5/15/95 (pp. 102-103) and 11/3/95 (pp. 33-36).

⁶ When Representative Granberg, seeking clarification, asked, "What are the criteria for this tax exempt status?" the response was as follows: Moffitt: "I think it is pretty much the things, Representative, that we covered. It must be for educational purposes, not-for-profit and have historic value and be contained completely within one county." * * * Granberg: "Our staff just indicated to me, Representative, that would have to be exclusive use for education. Is that correct?" * * * Moffitt: "That is correct." *Id.* at 10-11. When the current version of subsection (f) was enacted through Public Act 91-416, Senator Rauschenberger stated that the amendment "corrects a problem in our sales [sic] tax exemption --- Revenue Code that was caused by an amendatory veto under the Edgar administration and firmly --- firmly

allow an exemption for an organization whose purpose was not primarily historical and educational.

The evidence in the instant case does not establish that the NWRC is a historical society because it does not show that the NWRC has primarily historical and educational purposes or that its primary concern is to maintain its museum. Whether an institution has been organized and is operating exclusively for an exempt purpose is determined from its charter, bylaws and the actual facts relating to its method of operation. Du Page County Board of Review at 466. As the Department noted, some of the NWRC's purposes as stated in its Congressional Charter (e.g., perpetuating the memory of the GAR, cooperating in doing honor to veterans, teaching patriotism and the duties of citizenship, opposing every movement that would weaken loyalty to or destroy our Union, and inculcating the principles of representative government, equal rights, and justice) are similar to the ones the court found to be patriotic in Rogers Park, *supra*.⁷ The court stated that the organization was "organized to carry out the purposes and objectives of the American Legion, to foster love of country, respect for our civil institutions and to benefit and afford comradeship to its members." *Id.* at 291. The court added that these purposes are laudable but not charitable. *Id.*

Although the NWRC's purposes also include assisting in preserving records pertaining to the GAR and teaching the true history of our country, the NWRC has not

establishes that property owned by historical societies for charitable purposes are exempt from property tax, a status that they have had." See Transcription Debate, 91st General Assembly, Senate, 5/13/99, pp. 33-34.

⁷ The purposes of the organization in Rogers Park were as follows: to uphold and defend the Constitution of the U.S.A.; to maintain law and order; to foster and perpetuate a 100% Americanism; to preserve the memories and incidents of our association in the great wars; to inculcate a sense of individual obligation to the Community, State and Nation; to combat autocracy of both the classes and the masses; to make right the master of might; to promote peace and good-will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness. Rogers Park at 288-289.

established that these are the primary focus of the organization. It is noteworthy that the one purpose concerning documents and records is to “assist” in preserving them and making them available for research, which suggests that preserving the documents is only a secondary concern and not the most important function of the organization. The NWRC’s purposes clearly do not indicate that its primary goal is to preserve and maintain items pertaining to history or the museum itself.

In addition, the facts relating to NWRC’s method of operation do not support a finding that it is organized primarily for historical purposes. The applicant is a national organization that has members throughout the country. The meetings of each Corps are required to be held at least monthly, but the applicant did not explain the agenda or activities that take place during those meetings. Similarly, the national convention lasts four days, and other than two breakfasts, a dinner and a banquet, the applicant did not explain what programs or activities take place during that time. The same is true for the annual department convention. In addition, four times a year the applicant publishes General Orders, some of which include items raised at the national convention, but a sample of the General Orders was not provided. The Standing Rules of National Convention state that the month of October is to be set aside by all Corps to conduct special events and promote donations for the museum, but these events appear to be the only activities that the members conduct that concern the museum. For the fiscal year ending August 31, 2006, the expenses relating to the museum were approximately 35% of the NWRC’s total expenses.⁸ The applicant does have a substantial amount of money

⁸ The NWRC spent \$8,397 for museum expenses plus \$1,150 for the museum’s insurance for a total of \$9,547. This was approximately 35% of the total expenses of \$27,456. (App. Ex. #12)

restricted for museum use,⁹ but the remaining evidence simply does not indicate that the NWRC's activities are primarily concerned with maintaining the museum or promoting knowledge pertaining to the history of the Civil War.

The NWRC's purposes and activities distinguish it from other historical organizations that have received exemptions. Although Illinois case law does not define historical society, in Vermilion County Museum Society v. Department of Revenue, 273 Ill. App. 3d 675 (4th Dist. 1995), the court granted a charitable purposes exemption for an organization that was considered to be historical.¹⁰ The Museum Society's "main purpose [was] to maintain, for public museum purposes, the historic Fithian House and a couple other historically interesting buildings." *Id.* at 678. The court stated that it considered the study of history to be educational, which qualified the purpose of the Society as charitable. *Id.* at 679. The court then addressed the disputed factors in Methodist Old Peoples Home and granted the exemption, noting "the significant function of the Society is to provide a historical museum." *Id.* at 680. Similarly, in Everett McKinley Dirksen, *supra*, the organization's primary purpose was to maintain and preserve the public books, records, and other materials associated with the public service of Senator Dirksen. Its other purpose was to make endowments for the study and dissemination of the art and science of public service. In both Vermilion County and Everett McKinley Dirksen, the primary function of the organization was to maintain buildings or records for historical and educational purposes. In the present case, the GAR Memorial Museum is historical and educational, but the evidence does not support a

⁹ The Museum Investment Fund had \$73,935 for the fiscal year ending August 31, 2006 and is temporarily closed to disbursements. The fund for museum operating expenses had \$1,141. (App. Ex. #3, p. 78, #12, p. 10)

¹⁰ This decision was rendered shortly before Public Act 89-426 was enacted and did not concern subsection (f) of section 15-65.

finding that it is the primary reason for the applicant's existence or that it is the principal focus of the applicant's activities. Exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. See Hopedale Medical Foundation, *supra*. Because the NWRC has not established that its purposes and activities are mainly historical and educational, it cannot be found that it is a historical society.

The NWRC has also not established that it is organized as a charitable institution within the meaning of subsection (a) of section 15-65. Initially, it must be noted that the word "charitable," or any variation of the word, is not included in its purposes. As mentioned previously, the NWRC's purposes are primarily patriotic, which the court in Rogers Park, *supra*, found do not constitute charitable purposes.

Furthermore, the organization's activities that were referred to during the hearing are admirable but not primarily charitable. In North Shore Post No. 21, *supra*, the court denied a charitable exemption for a veterans' organization, noting that the only evidence of charitable activities was that members of the women's auxiliary prepared and collected personal items for hospitalized veterans and volunteered at hospitals. *Id.* at 236. In the present case, the NWRC claims that its members give personal items to hospitalized veterans and spend "countless hours" with them, but it did not present any substantiating evidence or evidence indicating that this is the majority of what it does or that its members are required to do it. Other than volunteer activities with veterans, the NWRC's remaining activities (e.g., the awards for patriotic essays and the presentation of the Gettysburg Address plaques, the flags and the memorial wreaths) are activities that are patriotic and public spirited but not charitable. If the services performed for the veterans

are the only charitable activities that the NWRC performs, then the evidence does not indicate that this is the primary function of the organization.

Moreover, it is difficult to overlook the benefits of membership. Although the NWRC operates with a tight budget, its expenses included more than \$500 for a gold badge for one of the past National Presidents. Also, without additional evidence concerning its meetings, the meetings appear to be primarily to provide comradeship to its members. In addition, despite the fact that the NWRC's scholarship policies may have changed in 2007, during the year in question and at least some of the previous years, its scholarships were limited to members or children of members.

It must be noted that other than the services that the NWRC's members provide for veterans, the evidence includes one other charitable activity of the NWRC: the operation of the museum. The museum is free and open to the general public, and according to Vermilion County, *supra*, the museum is used for charitable purposes. Unfortunately, the use of property for charitable purposes does not alone qualify the property for an exemption. In order to receive the exemption, the applicant must show that the property is both owned by a charitable organization and used for charitable purposes. See Chicago Patrolmen's Association, *supra*. Although approximately 63% of the property is used for charitable purposes, the museum is not the primary purpose or activity of the organization itself. The evidence does not establish that the NWRC's primary function is to maintain the museum. In order to receive the exemption, the NWRC must prove by clear and convincing evidence that it is entitled to the exemption, and all doubts must be resolved in favor of taxation. See Hopedale Medical Foundation,

supra. Because the NWRC has not established that its purposes and activities are primarily charitable, the exemption must be denied.

Recommendation:

Because the evidence presented does not support a finding that the applicant is a historical society or a charitable institution, it is recommended that the exemption be denied.

Linda Olivero
Administrative Law Judge

Enter: December 31, 2007